

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

CASE NO. 10-12247

HON. LAWRENCE P. ZATKOFF

v.

ERIC L. WALDON,

Defendant.

ORDER

This matter is before the Court on Defendant's motion to dismiss [dkt 3] and the Court's order to show cause [dkt 8] as to why Plaintiff's motion for summary judgment [dkt 7] should not be granted. Defendant's motion has been fully briefed. Defendant did not timely respond to Plaintiff's motion or the Court's order to show cause. The Court finds that the facts and legal arguments are adequately presented in the parties' papers such that the decision process would not be significantly aided by oral argument. Therefore, pursuant to E.D. Mich. LR 7.1(f)(2), it is hereby ORDERED that the motions be resolved on the briefs submitted. For the following reasons, Defendant's motion is DENIED, and Plaintiff's motion is GRANTED.

A. Defendant's Motion to Dismiss

Plaintiff brought this action for the recovery of student loans. In his motion to dismiss, Defendant claims the following: (1) the amount in controversy is less than the sum or value specified in 28 U.S.C. § 1332; (2) Defendant is not subject to the personal jurisdiction of this Court; (3) venue is improper because Defendant does not reside in this district and no part of the events or omissions

giving rise to the claim occurred in this district; (4) Defendant was not properly served; and (5) the complaint fails to state a claim upon which relief can be granted. These allegations, however, constitute the extent of Defendant's one-page motion. Defendant provides the Court with no explanation, either based on the facts or legal authority, that would support his claims. While Defendant advances additional arguments in his reply brief, such arguments may not be considered by the Court. *See Chavez-Sebastian v. United States*, No. 1:08-cr-37, 2009 U.S. Dist. LEXIS 81717, at *10-11 (W.D. Mich. Sept. 9, 2009) ("Generally, an argument raised for the first time in a reply brief is not properly before the court as the opposing side has not been afforded an opportunity to respond.") (citing *ABC Beverage Corp. & Subsidiaries v. United States*, 577 F. Supp. 2d 935, 950 n.16 (W.D. Mich. 2008)). *See also Scottsdale Ins. Co. v. Flowers*, 513 F.3d 546, 553 (6th Cir. 2008). Therefore, the Court denies Defendant's motion to dismiss.

B. Plaintiff's Motion for Summary Judgment

On August 31, 2010, Plaintiff filed a motion for summary judgment. Defendant did not timely respond to Plaintiff's motion. Thereafter, the Court ordered Defendant to show cause as to why Plaintiff's motion should not be granted. The Court warned Defendant that failing to timely respond to the Court's show-cause order would result in the Court's granting Plaintiff's motion. Defendant did not timely respond to the Court's show-cause order. Therefore, the Court grants Plaintiff's motion for summary judgment.

C. Conclusion

Accordingly, for the above stated reasons, IT IS HEREBY ORDERED that Defendant's motion to dismiss [dkt 3] is DENIED.

IT IS FURTHER ORDERED that Plaintiff's motion for summary judgment [dkt 7] is GRANTED.

IT IS SO ORDERED.

S/Lawrence P. Zatkoff
LAWRENCE P. ZATKOFF
UNITED STATES DISTRICT JUDGE

Dated: October 18, 2010

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of this Order was served upon the attorneys of record by electronic or U.S. mail on October 18, 2010.

S/Marie E. Verlinde
Case Manager
(810) 984-3290